IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 178 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

MEHSANA DIST. CO.OP.MILK PRODUCERS UNION LTD.

Appearance:

MR AKIL QURESHI FOR MR MANISH R BHATT for Applicant.

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 04/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

At the instance of the revenue, the Income Tax Appellate Tribunal, Ahmedabad Bench 'A' has referred the following question under section 256(2) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for the opinion of this Court :

"Whether on the facts and in the circumstances of the case, the Appellate Tribunal has been right in law in holding that relief under section 35-C is exigible to the assessee at 10% of the expenditure as claimed ?"

2 Mr.Akil Qureshi, learned Counsel appearing for the revenue and Mr.J.P.Shah, learned Counsel appearing for the respondent-assessee have been heard.

3 Common ground between the parties is that the question referred has already been decided in case of Kaira District Cooperative Milk Producers Union Ltd., vide decision dated 2/7/2001 in Income Tax Reference No.32 of 1987. For the reasons stated in the aforesaid decision we hold that the Tribunal was not right in law in holding that relief under section 35C of the Act was available to the assessee only to the extent of 10% of expenditure as claimed. This Court has already held that the assessee is entitled to deduction of the entire amount of expenditure incurred under section 35C of the Act. The question referred to us is therefore answered in the negative i.e. in favour of the assessee and against the revenue.

4 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(M.S.Shah,J) (D.A.Mehta,J)
m.m.bhatt